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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT CHILD)
RELATIONSHIP OF F.D., O.D., S.D., THE)
MINOR CHILDREN, and their MOTHER)
ANGELA DRAKE and their FATHER TIMOTHY)
DRAKE,)

Appellants-Respondents,)

vs.)

MIAMI COUNTY DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 52A05-0609-JV-487

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable Daniel C. Banina, Judge
Cause No. 52D01-0503-JT-17, JT-18, JT-19

January 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Angela (“Mother”) and Timothy (“Father”) Drake each appeal the trial court’s termination of their parent-child relationships with their three children, O.D., F.D., and S.D. upon petition of the Miami County Department of Child Services (“the DCS”). We affirm.

Issues

Mother and Father each raise the following issues:

- I. whether there is sufficient evidence to support the termination of the parental relationships; and
- II. whether the trial court erred in admitting evidence during the termination hearing.

Facts

The facts most favorable to the judgment reveal that thirty-one-year-old Mother and fifty-four-year-old Father have three children: O.D., born in May 1999; F.D., born in April 2001; and S.D., born in May 2003. In late 2003, the family moved to Peru, Indiana, so that Father could look for a job. Because they were unemployed and homeless, the

parents voluntarily placed their children in a guardianship with Lynette Johnson, a court-appointed special advocate volunteer. Soon after, Johnson discovered that the children were too much for her to handle and contacted the DCS, which took custody of the children on January 28, 2004. The three children were placed in foster care and adjudicated to be Children in Need of Services (CHINS) in August 2004. In March 2005, the DCS filed a petition to terminate the Drakes' parental relationships with their children.

Evidence at the termination hearing revealed that all three Drake children have special needs. O.D. is mildly mentally handicapped and has been diagnosed with cerebral palsy, for which she receives twice-weekly physical therapy as well as occupational and speech therapies. She has also been diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder, and reactive attachment disorder. F.D. was not able to talk when he was placed in foster care at age three and requires speech therapy. He also has anger problems that include out-of-control aggression, biting, slapping, and hitting, and he must be watched at all times. He was admitted to Community North Hospital in Indianapolis for eight days in November 2004 to address his aggression and outbursts and, like O.D., has been diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder, and reactive attachment disorder. S.D. has breathing problems that require a breathing machine and treatments. In addition, she must be separated from her brother F.D. in a safe play area.

According to DCS case manager Carol Conrad, Mother and Father do not understand the seriousness of each child's condition. For example, Mother smokes a

pack of small cigars every day despite S.D.'s breathing problems. Mother also disagrees that O.D. is mentally handicapped and suffers from cerebral palsy. Instead, Mother believes that her daughter has nothing more than a twisted femur and is gifted.

Conrad further testified that even if they understood the extent of their children's special needs, the parents do not have the ability to attend to these needs. For example, both parents have physical disabilities, including difficulty walking. Father has degenerative discs in his back and is unable to work. He is currently receiving non-service connected disability from the Veteran's Administration. In a psychological evaluation, Mother reported that she 1) suffers from Duane's Syndrome and is expected to be completely blind by the age of thirty; 2) has no rectum muscle and is unable to control her bowel movements; 3) has degenerative arthritis and osteoarthritis; and 4) may have fibromyalgia. The evaluation also indicates that Mother has previously reported that she suffers from minor brain damage and is unable to work due to her multiple physical problems. She has, however, been denied for SSI benefits five times.

Conrad also testified that Father has anger management problems. During one of Conrad's visits to the Drake's home, Father became angry with Conrad and ordered her out of the house. As Conrad exited the Drakes' trailer, Father threw the camera that she left on the couch in her direction. Another time, Conrad went to the Drakes' trailer to transport them to visitation with their children. Father opened the door and told her to "get off his f'in property." Tr. p. 48. Despite these problems, Father has refused to attend court-ordered anger management classes.

Conrad assigned Cheryl Oden to provide home-based services to the Drakes.

Oden's objectives were to help the Drakes provide their children with a clean, safe, and stable home; to encourage them to be able to financially provide for their family; and to ensure that they would be able to attend to the physical, developmental, and emotional needs of their children. Father refused to cooperate with Oden. In April 2004, he verbally assaulted Oden and threw her out of his home. Oden offered to continue to provide services to the Drakes at her office, but the parents informed her that they did not need any further assistance.

Oden nevertheless continued to supervise the Drakes' weekly visitation with their children. According to Oden, both parents were inappropriate with their children during visitation. For example, Mother slapped F.D. on the mouth during one of his aggressive outbursts. She also has difficulty taking care of all of the children at one time, even when they are all together in one room. Father verbally assaulted Oden in front of his children during one of the visitation sessions, and pushed the foster mother during another session. The police were called, but Father left before they arrived. On another occasion, both parents had to be instructed twice before they removed a screw from S.D.'s mouth. In April 2006, the court suspended visitation between the parents and the two older children because the visits upset the children.

Court-appointed special advocate Carla Thompson testified that she was concerned about the children's safety if the parents were allowed unsupervised visits in their home. Specifically, Thompson explained that in the past, the children have walked away from their home and were later found walking in the street two to three blocks away. The trailer where the Drakes now live is near a river and two busy streets.

Thompson also expressed concern that there was nowhere for O.D. to ride her bicycle or jump on her trampoline, both recommended therapeutic activities in which she currently participates.

Thompson further testified that she was concerned that Mother wants her children to have a relationship with her mother, the children's grandmother ("Grandmother"). Grandmother abused Mother when Mother was a child, and Mother's issues resulting from this abuse and her current relationship with Grandmother impact her ability to parent. In addition, Grandmother has also abused the children in the past. During one incident, Grandmother barricaded the children in the bedroom with her by putting a dresser in front of the door. Mother heard the children screaming but could not get into the room. When O.D. was allowed to leave the room, she was taken to the doctor where she reported that "grandma f**ked [her]." Tr. p. 168.

Other testimony at the hearing revealed that Mother and Father were both charged with maintaining a common nuisance in October 2005 after a taxi driver brought an intoxicated fifteen-year-old girl to their house to spend the night and they engaged in sexual activity with the girl. Mother was eventually convicted of a class D felony for this incident. Father's charges were still pending at the time of the termination hearing. Mother subsequently engaged in sexual activity with the taxi driver even though she knew that he was HIV positive. At the time of the termination hearing, Father had a pending felony battery charge resulting from his physical abuse of Mother and was living with a convicted child molester.

Following the termination hearing, in July 2006, the trial court issued an extensive

fifteen-page order finding that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well being of all three children and terminating the parent-child relationship between both parents and their three children. Both parents appeal.

Analysis

I. Sufficiency of the Evidence

The purpose of terminating parental rights is not to punish parents but to protect their children. In re Termination of the Parent-Child Relationship of D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. Id.

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. In re R.S., 774 N.E.2d 927, 929-30 (Ind. Ct. App. 2002), trans. denied. When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id. at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

Indiana Code Section 31-35-2-4(b) sets out the following relevant elements that a department of child services must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (i) the child has been removed from the parent for at least six

months under a dispositional decree:

* * * * *

- (A) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (B) termination is in the best interests of the child; and
- (C) there is a satisfactory plan for the care and treatment of the child.

Here, Mother and Father contend that there is insufficient evidence to support the termination of their parental rights. Specifically, they contend that the DFC failed to prove that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of their children.

Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. R.S., 774 N.E.2d at 930. Although the trial court should judge a parent's fitness at the time of the termination hearing, it must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect of the children. Matter of C.M., 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id.

Our review of the evidence reveals that all three Drake children have special needs. Seven-year-old O.D. is mildly mentally handicapped and has been diagnosed with cerebral palsy, for which she receives physical, occupational, and speech therapies. She has also been diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder, and reactive attachment disorder. Five-year-old F.D. was not able to talk when he was placed in foster care at age three and requires speech therapy. He also has anger problems that include out-of-control aggression, biting, slapping, and hitting. Like O.D., he has been diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder, and reactive attachment disorder. Three-year-old S.D. suffers from breathing problems that require a breathing machine and breathing treatments.

The Drake parents do not understand the seriousness of each child's condition, and even if they did, they do not have the ability to attend to their children's needs because of their own physical and emotional disabilities. In addition, the Drakes have been inappropriate with the children during supervised visitations. The court eventually suspended visitation between the parents and their two older children because the visits upset the children.

Further, during the pendency of the CHINS proceeding, both parents engaged in sexual activity with an intoxicated fifteen-year-old girl that a taxi driver brought to their house. As a result of the incident, Mother has a felony conviction, and Father has pending criminal charges. Father also has a pending felony battery charge resulting from

his physical abuse of Mother. At the time of the termination hearing, Father was living with a convicted child molester.

Recognizing our deferential standard of review, we find that this evidence supports the trial court's finding that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children.

Mother and Father further contend that there is insufficient evidence that termination of the parent-child relationships is in the best interests of their children. A parent's historical inability to provide adequate housing, stability, and supervision coupled with a current inability to provide the same will support a finding that the continuation of the parent-child relationship is contrary to the child's best interests. Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997). Mother and Father have historically been unable to provide adequate housing, stability, and supervision, and testimony at the hearing reveals that they are currently unable to do the same. Their argument therefore fails.

II. Admission of Evidence

Mother and Father also argue that the trial court erred in admitting DCS's Exhibit 4 into evidence. Exhibit 4 is the transcript of the fact-finding hearing in the underlying CHINS action in this case. Both parents contend that the transcript was inadmissible hearsay. In support of their argument, Mother and Father both cite In re the Termination of the Parent-Child Relationship of E.T., 808 N.E.2d 639 (Ind. 2004). In E.T., the Indiana Supreme Court held that reports compiled by social service agencies describing home visits and supervised visitations are not admissible under Indiana Rule of Evidence

803(6), the business record exception to the hearsay rule, in a proceeding to terminate parental rights. Id. at 645. Here, however, Exhibit 4 was not a report describing home visits and supervised visitations. Rather, it was the transcript of the fact-finding hearing in the underlying CHINS action. E.T. is therefore inapposite.

We further note that the improper admission of evidence is harmless error when the judgment is supported by substantial independent evidence to satisfy the reviewing court that the questioned evidence did not contribute to the judgment. Id. at 645-46. Here, even if the transcript of the CHINS fact-finding hearing was erroneously admitted, there was sufficient testamentary evidence aside from the transcript to support the termination of parental rights. Any error in the admission of the transcript would therefore have been rendered harmless.

Conclusion

We reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” Egly v. Blackford County DPW, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here, and therefore affirm the trial court.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.